

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs September 26, 2006

**JOSEPH G. WILLIAMS, JR. v. STATE OF TENNESSEE**

**Direct Appeal from the Criminal Court for Sullivan County  
No. C51,608     Phyllis H. Miller, Judge**

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**No. E2006-00230-CCA-R3-PC - Filed November 27, 2006**

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The petitioner, Joseph G. Williams, Jr., appeals from the post-conviction court's order dismissing his combined petition for post-conviction relief and petition for a writ of habeas corpus. Following our review, we affirm the judgment of the post-conviction court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed**

ALAN E. GLENN, J., delivered the opinion of the court, in which NORMA MCGEE OGLE and J.C. McLIN, JJ., joined.

Joseph G. Williams, Jr., Northwest Correctional Complex, Tiptonville, Tennessee, Pro Se.

Paul G. Summers, Attorney General and Reporter; Cameron L. Hyder, Assistant Attorney General; and H. Greeley Wells, Jr., District Attorney General, for the appellee, State of Tennessee.

**OPINION**

**FACTS**

On November 20, 2002, the petitioner pled guilty, with the judgments being entered on February 6, 2003, to reckless aggravated assault and driving under the influence in the Criminal Court for Sullivan County. He was sentenced as a multiple offender to concurrent probationary terms of five years for the assault conviction and eleven months and twenty-nine days for the driving under the influence conviction and did not appeal these convictions. More than two years after entry of his guilty pleas, on March 10, 2005, the trial court revoked his probation and ordered him to serve the five-year sentence in the Department of Correction. He is currently incarcerated at the Northwest Correctional Complex in Lake County.

On January 9, 2006, the petitioner filed a *pro se* petition for post-conviction relief in the Criminal Court for Sullivan County. In his petition, he argued that his guilty pleas were entered involuntarily and that he was denied the effective assistance of counsel. He also alleged that he was denied the following constitutional rights: due process of law; protection against double jeopardy;

and “his rights under the Fifth Amendment.” The post-conviction court dismissed the petition without a hearing, finding that it was barred by the one-year statute of limitations. In its order, the court noted that the petitioner had stated the petition also was for a writ of habeas corpus, which the court concluded would have to be dismissed because “the [p]etitioner does not allege that his sentences have expired; nor does he allege any ground on which the [c]ourt could find that his convictions are void.”

## **ANALYSIS**

### **I. Petition for Post-Conviction Relief**

The trial court entered judgments on the defendant’s guilty pleas on February 6, 2003, and no appeal was filed as to the sentences. Tennessee Code Annotated section 40-30-102(a) allows prisoners one year from the date on which their judgment became final to file a petition for post-conviction relief. See Tenn. Code Ann. § 40-30-102(a) (2003).

The petitioner filed his petition on January 9, 2006, almost three years after the entry of the judgments of conviction on his sentences. Accordingly, his petition was untimely unless it showed that one of three exceptions applied: (1) the claim in the petition is based on a constitutional right that was not recognized until after his conviction; (2) the petition claims that new scientific evidence establishes his innocence; or (3) the petition shows that his sentence was enhanced by a subsequently invalidated conviction. Tenn. Code Ann. § 40-30-102(b)(1)-(3) (2003). Since the petition did not claim that any of these exceptions applied, it was time barred. Id.

On appeal, the petitioner asserts that he has not received due process and sets out several arguments as to why the statute of limitations should not bar his claim: he was incompetent to stand trial; the prosecutor “deceived the mental evaluation process”; the statute of limitations was tolled by the issuance of the warrant charging the petitioner with violating his probation; and he has not had adequate access to legal materials. However, these claims are waived because the petitioner did not raise them before the post-conviction court. Cauthern v. State, 145 S.W.3d 571, 599 (Tenn. Crim. App. 2004) (stating “an issue raised for the first time on appeal is waived”) (citing State v. Alvarado, 961 S.W.2d 136, 153 (Tenn. Crim. App. 1996); see also Tenn. Sup. Ct. R. 28, § 2(D) (stating “[a] ground for relief is waived if petitioner or petitioner’s counsel failed to present the ground for determination in any proceeding before a court of competent jurisdiction in which the ground could have been presented).

### **II. Habeas Corpus**

The petitioner also contends that he is entitled to a writ of habeas corpus and raises several arguments in support thereof: the trial court did not have jurisdiction due to faulty indictments; his indictment failed to charge an offense; he was convicted under an unconstitutional statute; his guilty pleas were not knowingly, voluntarily, or intelligently entered; and he received the ineffective assistance of counsel.

It is well-established in Tennessee that the remedy provided by a writ of habeas corpus is limited in scope and is only available to a petitioner “when the judgment is void on its face or the prisoner’s sentence has expired.” Searle v. Juvenile Court for Williamson County, 188 S.W.3d 547, 550 (Tenn. 2006) (citation omitted); State v. Ritchie, 20 S.W.3d 624, 629 (Tenn. 2000); State v. Davenport, 980 S.W.2d 407, 409 (Tenn. Crim. App. 1998); Passarella v. State, 891 S.W.2d 619, 626 (Tenn. Crim. App. 1994). A void, as opposed to a voidable, judgment has been defined by our supreme court as “one in which the judgment is facially invalid because the court did not have the statutory authority to render such judgment.” Dykes v. Compton, 978 S.W.2d 528, 529 (Tenn. 1998); see also Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). The judgment of a court of general jurisdiction is conclusive and presumed to be valid, and such a judgment can only be impeached if the record affirmatively shows that the rendering court was without personal or subject matter jurisdiction. Archer v. State, 851 S.W.2d 157, 162 (Tenn. 1993); Passarella, 891 S.W.2d at 626.

As the petitioner has not alleged that his convictions are void, or that his sentences have expired, we conclude that the post-conviction court properly dismissed his petition. Moreover, the petition could have also been dismissed for failure to comply with the statutory mandate regarding venue for habeas corpus actions: “The application should be made to the court or judge most convenient in point of distance to the applicant, unless a sufficient reason be given in the petition for not applying to such court or judge.” Tenn. Code Ann. § 29-21-105 (2003).

The petitioner is incarcerated in Lake County but filed his habeas petition in the Criminal Court for Sullivan County, and his petition stated no reason why he did not file in Lake County. As such, the petitioner has failed to comply with Tennessee Code Annotated section 29-21-105, and his petition should therefore be dismissed. Marvin Anthony Matthews v. State, No. W2003-00106-CCA-R3-CO, 2003 WL 23100812, at \*1 (Tenn. Crim. App. Dec. 31, 2003) (stating that post-conviction court properly dismissed the petitioner’s habeas corpus petition for failure to comply with Tennessee Code Annotated section 29-21-105 because there was not sufficient reason for noncompliance); see also Church v. State, 987 S.W.2d 855, 857 (Tenn. Crim. App. 1998) (stating “[p]ursuant to [Tennessee Code Annotated section] 29-21-105, a petition for habeas corpus relief *must* be filed in the court ‘most convenient in point of distance to the applicant’ unless sufficient reason is given for applying to another court”) (emphasis added); State v. Avery, 387 S.W.2d 346, 347 (Tenn. 1964) (stating that the petitioner “did not file his petition in the county where he was being held, nor before a court or judge nearest him in point of distance; nor did he give any reason in his petition for not doing so. Such being the case the writ should have been dismissed.”).

### **CONCLUSION**

Based on the foregoing reasoning and authorities, we affirm the judgment of the post-conviction court.

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ALAN E. GLENN, JUDGE